

BEFORE THE BOARD OF HOUSING  
DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA

In the matter of the amendment of            ) NOTICE OF AMENDMENT  
ARM 8.111.305 and 8.111.305A            )  
pertaining to the homeownership        )  
program                                        )

TO: All Concerned Persons

1. On February 14, 2008, the Board of Housing published MAR Notice No. 8-111-65 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 267 of the 2008 Montana Administrative Register, Issue Number 3.

2. The board has thoroughly considered the comments received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: A comment was received that requiring audited financial statements from all lender and servicer applicants may not be informative as financial institutions regulated by a regulatory agency such as the Office of Thrift Supervision may not necessarily have audited financial statements specific to a subsidiary lender or servicer applicant. The commenter suggested that the board continue to accept reports submitted to the regulatory agency if the applicant is regulated by an agency designated in ARM 8.111.305B in lieu of audited financial statements.

RESPONSE #1: The board agrees. The proposed rules have been amended to provide that an applicant regulated by one of the designated regulatory agencies may meet this requirement by submitting the reports required of the applicable regulatory agency.

COMMENT #2: The board received a number of comments regarding the requirements for submission of a quarterly report to a regulatory agency by a regulated lender or servicer or six months financial information for a nonregulated lender or servicer. Comments were that the board should look at a longer period of time than just a quarter for regulated lenders or services and six months for those that are not regulated by a designated regulatory. One commenter stated that the board should allow for a broader assessment of the financial health of the lender or servicer and to consider the applicant against a spectrum of financial criteria.

RESPONSE #2: The board agrees. It will request a regulated applicant to submit the reports from the regulatory agency for the four quarters immediately preceding the date of application to be approved as a lender or servicer. Further, it has deleted the requirement that the reports or the financial statements submitted by a lender or servicer must show a positive return. Instead, the proposed rule has been modified to allow the board to exercise its discretion to approve a lender or servicer by looking

at the broader financial health of the applicant including the lender's or servicer's overall performance in the marketplace.

COMMENT #3: One commenter objected to the requirement that an office be designated within the state of Montana where servicing of board loans would be performed, stating that several servicers have loan servicing centers outside of the state of Montana.

RESPONSE #3: The board agrees. There were several reasons for previously requiring in-state servicing. The primary reason was to ensure that board customers were able to make loan payments in Montana, obtain information on their loans, and easily obtain resolution of servicing issues. Secondly was the expense of conducting servicing audits when the servicing is conducted out of state. Lastly was the problem of not being informed of physical location where an out of state servicer is servicing board loans. The first two issues are resolved by ARM 8.111.305A(7), and the last issue is resolved by an amendment to the proposed rule ARM 8.111.305A(2)(a) and ARM 8.111.305A(5)(b) to require a lender to keep the board notified of the physical location where board loans are being serviced.

3. The board has amended ARM 8.111.305 and ARM 8.111.305A with the following changes, stricken matter interlined, new matter underlined:

8.111.305 APPROVED LENDERS (1) A public or private entity ("applicant") maintaining an office in the state and authorized by law to make or participate in making new, residential mortgage loans may ~~request~~ apply, in writing, for designation as an approved lender for board programs.

(2) All ~~requests~~ applications must include:

(a) remains as proposed.

(b) a list of the personnel principally involved in making and servicing mortgage loans, the office address, phone number, description of qualifications, ~~the position in the applicant's organizational structure for each person~~, and a copy of each person's mortgage broker and loan originator license if applicable;

(c) remains as proposed.

(d) if the applicant is regulated by one of the regulatory agencies defined in ARM 8.111.305B, the applicant's most recent regulatory agency reports covering the four quarters immediately preceding the date of application which must indicate, based on generally accepted accounting principles (GAAP), total capital as a percentage of average assets of at least 6% or meet all applicable capital requirements of the regulatory agency and a minimum net worth of \$1,000,000; or, if the applicant is not regulated by a regulatory agency defined in ARM 8.111.305B, the applicant's most recent audited financial statements for the applicant's most recently completed fiscal year and financial statements prepared within 60 days of submission for at least a six-month period immediately preceding the date of the financial statements comprised of a balance sheet, year-to-date income statement, and a statement of change covering at least the immediately preceding six-month period. which must indicate, based on generally accepted accounting principles

(GAAP), indicate a positive return on average assets, total capital as a percentage of average assets of at least 6%, and a minimum net worth of \$1,000,000;

(e) and (f) remain as proposed.

(3) The board ~~will determine whether or not an applicant is approved under the terms and conditions of~~ in its discretion, may approve or deny an applicant based on the financial information submitted pursuant to (2)(d), the applicant's performance in the marketplace, and the requirements of Title 90, chapter 6, MCA, the applicable trust indenture, and the rules then in effect. A lender approved under this section will be notified and advised of the conditions of its approval.

(4) Each year or as may be requested by the board, an approved lender participating in the board's programs shall submit:

(a) if the lender is not regulated by one of the regulatory agencies defined in ARM 8.111.305B, its audited financial statements for its most recently completed fiscal year or, if the lender is regulated by one of the regulatory agencies defined in ARM 8.111.305B, the lender's regulatory agency reports for the previous four quarters, demonstrating that the financial standards described in (2)(d) continue to be met;

(b) through (5) remain as proposed.

(6) The relationship between the board and an approved lender is contractual in nature. The approved lender must comply with the provisions of the board's Mortgage Purchase and Servicing Guide as the same may be amended from time to time. The board may terminate a lender's approval to make board loans at any time without cause and without a termination fee. The board will terminate a lender's approval to make board loans for repeated or material failure of the lender to comply with the provisions of the board's Mortgage Purchase and Servicing Guide. Board staff may suspend a lender's approval to make board loans on a temporary basis for a lender's failure to comply with the board's Mortgage Purchase and Servicing Guide. If the lender is unable or fails to correct the noncompliance with the guide, board staff will refer the suspension to the board for appropriate action.

AUTH: 90-6-104, 90-6-106, ~~90-6-108~~, MCA

IMP: 90-6-106, 90-6-108, ~~90-6-110~~, MCA

#### 8.111.305A APPROVED LOAN SERVICERS

(1) remains as proposed.

(2) All applications shall be in writing and include the following:

(a) ~~designation of the office(s) in the state of Montana for loan servicing~~ identification of the location where board loans will be serviced, which information must be kept current at all times;

(b) and (c) remain as proposed.

(d) a list of the applicant's personnel principally involved with servicing mortgage loans, the office address, phone number, and a description of qualifications, ~~and the position in the applicant's organizational structure for each person;~~

(e) remains as proposed.

(f) if the applicant is regulated by one of the regulatory agencies defined in ARM 8.111.305B, the applicant must submit the applicant's regulatory agency

reports covering the four quarters immediately preceding the date of application which must indicate, based on generally accepted accounting principles (GAAP), total capital as a percentage of average assets of at least 6% or meet all applicable capital requirements of the regulatory agency and a minimum net worth of \$1,000,000; or if the applicant is not regulated by a regulatory agency defined in ARM 8.111.305B, the applicant's most recent audited financial statements for the applicant's most recently completed fiscal year and financial statements prepared within 60 days of submission for at least a six-month period immediately preceding the date of the financial statements comprised of a balance sheet, year-to-date income statement, and a statement of change covering at least the immediately preceding six-month period which must indicate, based on generally accepted accounting principles (GAAP), a positive return on average assets, total capital as a percentage of average assets of at least 6%, and a minimum net worth of \$1,000,000; and

(g) and (3) remain as proposed.

~~(4) The application will be reviewed by the board's staff, and the institution will be notified in writing of the status of the application. The board, in its discretion, may approve or deny an applicant based on the financial information submitted pursuant to (2)(e), the applicant's performance in the marketplace, and the requirements of~~ will determine whether or not an applicant is approved under the terms and conditions of Title 90, chapter 6, MCA, the applicable trust indenture, and the rules then in effect. A servicer approved under this section will be notified and advised of the conditions of its approval.

(5) Each year or as may be requested by the board, an approved servicer shall submit:

(a) if the servicer is not regulated by one of the regulatory agencies defined in ARM 8.111.305B, its audited financial statements for its most recently completed fiscal year, or, if the servicer is regulated by one of the regulatory agencies defined in ARM 8.111.305B, the servicer's regulatory agency reports for the previous four quarters, demonstrating that the financial standards described in 2(f)(d) continue to be met;

(b) through (d) remain as proposed.

(e) evidence demonstrating that the servicer has internal controls providing for security of board funds and confidentiality of information related to board mortgagors, which evidence can be the servicer's most recent Statement of Auditing Standard 70 Report, or equivalent regulatory agency report, or an equivalent report from an outside auditor.

(6) and (7) remain as proposed.

(8) The relationship between the board and an approved servicer is contractual in nature. The approved servicer must comply with the provisions of the board's Mortgage Purchase and Servicing Guide as the same may be amended from time to time. The board may terminate a servicer's approval to ~~make service~~ board loans at any time without cause and without a termination fee. The board will terminate a servicer's approval to ~~make service~~ board loans for repeated or material failure of the servicer to comply with the provisions of the board's Mortgage Purchase and Servicing Guide.

AUTH: 90-6-104, 90-6-106, MCA  
IMP: 90-6-106, 90-6-108, MCA

/s/ KELLY A. CASILLAS  
KELLY A. CASILLAS  
Rule Reviewer

/s/ ANTHONY J. PREITE  
ANTHONY J. PREITE  
Director  
Department of Commerce

Certified to the Secretary of State June 2, 2008.